



## CHAVOND-BARRY ENGINEERING CORP.

400 County Route 518 • P.O. Box 205  
Blawenburgh, New Jersey 08504-0205

Tel: (609) 466-4900  
Fax: (609) 466-1231

April 9, 2020

Phil Ritz  
EPA Region 2

Subject: ACUA operations during the coronavirus pandemic

Dear Mr. Ritz

The ACUA has been struggling due to the unprecedented effects of the coronavirus pandemic which has virtually shut down the entire region of the country. These effects are multifaceted and permeate all of their operations. As the EPA understands, this worldwide pandemic has closed countless businesses and industries, has decimated the tourism industry on which Atlantic City survives, and has created shortages of supplies and testing capabilities nationwide. The ACUA is not immune to these effects. The businesses and industries being closed and the destruction of the tourism industry have hit Atlantic City hard. This has ramifications for the sludge being generated in both quantity and quality at the WWTP. The ACUA is doing its best to continue to operate under these difficulties but is increasingly being squeezed on all sides by the need to keep operating, keep personnel safe, and limit exposure of personnel from outside contractors. Masks and other protective equipment are becoming increasingly scarce and personnel who are understood to be high risk have been working from home, to the extent possible, to protect them. The ACUA has just finished a clean-out of the B incinerator which accepts outside sludge from all over the state/region. The ACUA had a challenging time arranging for this clean-out and made many accommodations to limit exposure to/from the outside firm which cleaned the furnace. The ACUA views this clean out as a one-time only option during this pandemic due to personnel safety and the increasing severity of the virus. It would be difficult to coordinate unexpected maintenance and/or clean-outs under the current circumstances which means any issues on the B furnace may result in an extended shut-down causing ramifications to the entire region due to the outside sludge which is shipped to ACUA along with possibly delaying the upcoming stack test scheduled for early May. This leaves the ACUA in a difficult situation in this quickly developing pandemic environment.

Resultantly, maintaining the current minimum afterburner temperature pursuant to 40 CFR 62 LLL places ACUA into a precarious operating point since this elevated temperature correlates in increased unexpected furnace maintenance and slag formation. In order to preserve the furnace in a de-slugged condition to remain on schedule to conduct the May stack testing and remain a viable option for our regional customers, the ACUA must currently operate at a lower afterburner temperature. Keeping the B furnace operational protects the region and other areas

of the country by keeping the sludge local and preventing essential truckers and other personnel from traveling to other areas of the country to dispose of sludge at alternative sites. This transportation poses a risk to other states which may not have many cases of the virus and increases the likelihood of spreading the virus. This transportation also, while unavoidable if B furnace fails, would prove detrimental to the quarantine efforts for the state/region. Maintaining the B furnace in operating condition also helps to protect ACUA personnel by not needing to arrange for outside contractors to clean out the furnace.

Due to these reasons and others, the ACUA is left with little choice except to lower the afterburner temperature to protect its personnel and the region, to the extent possible, from the virus. The ACUA is planning to operate the afterburner about 5% (80°F) lower to help limit the slag and wear on the furnace while still being responsible to the environment. The site specific afterburner temperature limit currently is 1602°F. The target minimum temperature due to the pandemic will be 1530°F with operations expected to be 20-40°F above that point. This temperature difference has proven to make a significant difference in slag formation and furnace wear over the years. The ACUA will continue to operate the scrubber/venturi systems at their site specific operating limits to ensure the environment is protected from excess pollution. Furthermore, the ACUA will continue to meet the NJ required 1500°F minimum afterburner temperature. Lastly, the ACUA will continue to operate, using the stack CEMS to guide operation, such that CO emissions are below the NJ limit of 100 ppmvd @ 7% O<sub>2</sub> limit specified in the permit. The federal limit for CO emissions from the multiple hearth furnace is 3,800 ppmvd @ 7% O<sub>2</sub> – which will likewise be met by meeting the 100 ppmvd @ 7% O<sub>2</sub> limit.

We hope the EPA/NJDEP understand the difficult position the ACUA is in under these stressful times. The ACUA believes this approach strikes a proper balance of protecting people from the pandemic and operating in an environmentally responsible and sustainable method. This also helps preserve the equipment and minimizes the chances of an unexpected shutdown that would delay the upcoming stack test. We appreciate the EPA's and DEP's understanding during this difficult time and their willingness to work with WWTPs to accommodate the needs and strains placed on all industries during this time.

Sincerely,

Chavond-Barry Engineering Corp.

A handwritten signature in cursive script, appearing to read "A. Hamfeldt".

Albert Hamfeldt P.E.

***Via First Class U.S. Mail***

April 8, 2020

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
DOJ Case No. 90-5-1-1-4414  
United States Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611

Water Manager Southwest Region  
Pennsylvania Department of  
Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Office of Regional Counsel, Natalie Katz  
Site Remediation Branch II Mail Code (3RC42)  
Office of Regional Counsel  
United States Environmental Protection  
Agency Region III  
1650 Arch Street  
Philadelphia, PA 19103

Program Chief  
Water Pollution Control & Solid Waste  
Management  
Allegheny County Health Department  
3901 Penn Avenue, Building #5  
Pittsburgh, PA 15224-1318

Water Protection Division Branch Chief  
(3W3P1)  
United States Environmental Protection  
Agency Region III  
1650 Arch Street  
Philadelphia, PA 19103

**Re: Force Majeure Notice arising out of COVID-19 Pandemic, *United States of America, Commonwealth of Pennsylvania, Pennsylvania Department of Environmental Protection, and Allegheny County Department of Health v. Allegheny County Sanitary Authority*, Civ. No. 2:07-cv-00737.**

To whom it may concern:

On behalf of the Allegheny County Sanitary Authority ("ALCOSAN"), we are providing written notification of a force majeure event in accordance with the Consent Decree that was entered by the United States District Court, Western District of Pennsylvania on January 23, 2008 and the Modified Consent Decree that is currently lodged with the court. *United States of America, Commonwealth of Pennsylvania, Department of Environmental Protection, and Allegheny County Health Department v. Allegheny County Sanitation Authority*, Civ. No. 2:07-cv-00737. The Modified Consent Decree has been subject to a public comment period; however, it has not yet been placed before the court. Nevertheless, with the understanding and consent of the plaintiffs, ALCOSAN has been and is proceeding with the Interim Measures set forth in Appendix Z of the Modified Consent Decree.



The United States is currently facing an unprecedented public health crisis due to the spread of the novel coronavirus ("COVID-19"). While the virus is widely recognized at this time, the following timeline reflects some of the major directives impacting Allegheny County.

- March 15, 2020 – Allegheny County Executive, Rich Fitzgerald, and Allegheny County Health Department Director, Debra Bogen, asked all nonessential businesses to close for at least 14 days.
- March 19, 2020 - Governor Tom Wolf ordered non-life-sustaining businesses to close their physical locations in seven counties including Allegheny County.
- March 21, 2020 – The first death attributable to COVID-19 is recorded in Allegheny County.
- March 23, 2020 - Governor Wolf issued a stay-at-home order for seven counties including Allegheny County.
- April 1, 2020 - Governor Wolf extended the stay-at-home order to all Pennsylvania counties and prohibits water/wastewater construction projects (excluding emergency repairs) until at least April 30, 2020.

Although ALCOSAN is proceeding to implement the Interim Measures set forth in the Modified Consent Decree in a timely manner, due to causes beyond the control of ALCOSAN arising out of and related to the COVID-19 pandemic and associated government-imposed restrictions, ALCOSAN is herein providing written notice that delays to the schedules and in the performance of the obligations set forth in the Modified Consent Decree, including the Interim Measures, could occur and should be excused in light of the pandemic. These delays could affect, among other things, the following: property acquisition, development of an Act 537 special study, wet weather plan revisions, public meeting dates, flow monitoring, testing and sampling by ALCOSAN and contracted entities, including laboratories, preventative maintenance obligations, and other construction and operational obligations.

Section XIII of the Modified Consent Decree provides the same relief set forth in the January 23, 2008 Consent Decree from a deadline where a force majeure event delays or prevents performance of any obligation under these documents. Under Paragraph 137 of the Modified Consent Decree, where the plaintiffs agree with the claim of force majeure, relevant deadlines are extended and stipulated penalties are excused. "Force Majeure" is broadly defined as "an event arising from causes beyond the control of ALCOSAN or the control of its employees, agents, consultants, and contractors, which delays or prevents the performance of any obligation under this Consent Decree." The impact of the COVID-19 pandemic in Allegheny County is an event arising from causes beyond the control of ALCOSAN.

In response to the presence of COVID-19 in Allegheny County, ALCOSAN has implemented emergency procedures to protect its employees and to fulfill its critical role of protecting public health. Importantly, ALCOSAN remains in full compliance with its existing environmental requirements while continuing to focus on implementing the requirements set forth in the

Modified Consent Decree. It has taken, and will continue to take, all reasonable measures to avoid and/or minimize delay in fulfilling the Modified Consent Decree requirements.

The COVID-19 pandemic certainly has the potential to delay completion of requirements under the Consent Decree. However, because of the uncertainty regarding the pandemic and the duration of limitations and consequences caused by it, ALCOSAN cannot currently determine whether, and to what extent specific requirements might be affected. Moreover, until affected requirements are identified, it is not possible to provide information regarding duration or mitigation. Accordingly, ALCOSAN will provide regular updates to this notice as more is known about the impact of COVID-19 locally and nationally.

We appreciate the agencies' time and consideration during this unprecedented and challenging time.

Sincerely,

A handwritten signature in blue ink that reads "Chester R. Babst III/UMB". The signature is written in a cursive, flowing style.

Chester R. Babst III  
Counsel for ALCOSAN

cc: A. Williams, ALCOSAN  
D. Smith, USDOJ  
B. Herschlag, PADEP  
M. Parker, ACHD



U.S. Department of Justice

Environment and Natural Resources Division

90-5-1-1-4414

Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

Telephone (202) 305-0371  
Facsimile (202) 514-0097  
dan.smith2@usdoj.gov

April 22, 2020

By electronic mail

Chester R. Babst III, Esq.  
Babst Calland  
Two Gateway Center  
Pittsburgh, PA 15222

Re: *United States, et al. v. ALCOSAN* (W.D. Pa. Civ. No. 2:07-00737)  
Notice of potential *force majeure* event

Dear Chip:

The Plaintiffs are in receipt of ALCOSAN's April 8, 2020 letter under Section XIII of the proposed modified consent decree lodged on September 19, 2019 providing notification of a potential *force majeure* event. (There are also *force majeure* provisions in Section XII of the consent decree entered in 2008 in this matter.) As you may be aware, on March 26, 2020, EPA issued a temporary Policy: "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" ("Policy") that addresses EPA enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. I am attaching a copy of that Policy.

ALCOSAN's notice asserts a potential *force majeure* event due to the COVID-19 pandemic and government directives issued in response to the pandemic. The Plaintiffs have conferred in preparing this response. This response is intended to cover the "Conveyance and Treatment System" that is the subject of the proposed modified consent decree, and the 2008 consent decree, in the above-referenced case. As you recognized on page three of your letter, ALCOSAN should continue to "adopt all reasonable measures to avoid or minimize" delays in implementing the requirements of the proposed modified consent decrees. (See Proposed Modified CD ¶ 136.)

ALCOSAN states that delays in implementing the proposed modified consent decree "could occur and should be excused." Although ALCOSAN provided examples of delays that might occur as a result of COVID-19, it "cannot currently determine whether, and to what extent specific requirements might be affected." Thus, the Plaintiffs are not currently able to evaluate whether any delays have been caused by the COVID-19 pandemic, and there is nothing to excuse or not excuse. In the event that ALCOSAN determines that specific requirements of the consent decree will be affected, please notify the Plaintiffs in accordance with the proposed modified consent decree, paying particular attention to the requirement that ALCOSAN:

[D]escribe in detail the basis for ALCOSAN's contention that it experienced a *Force majeure* delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to seek to prevent or minimize the delay, and the timetable by which those measures shall be implemented.

(Proposed Modified CD ¶ 136.) Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that ALCOSAN may not have complete information at this time, but it should provide additional information in accordance with that paragraph as more information becomes available.

We appreciate ALCOSAN's notice of a potential *force majeure* delay as well as ALCOSAN's efforts to remain in compliance with federal, state, and local law regarding its ongoing operations. We believe that it will be productive for ALCOSAN to maintain an open and continuing dialogue with the Plaintiffs. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds.

Thank you for your attention to this important matter. Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan S Smith", written in a cursive style.

Daniel S. Smith  
Senior Counsel

Cc: Natalie Katz, Esq. (EPA)  
Sushila Nanda, Esq. (EPA)  
Bruce Herschlag, Esq. (PADEP)  
Melanie Seigel, Esq. (PADEP)  
Michael Parker, Esq. (ACHD)  
Lisa Bruderly, Esq. (Babst Calland)

**From:** [Snowden, Kevin](#)  
**To:** [Hunt, Nathan](#)  
**Cc:** [hannah.coan@alohma.com](mailto:hannah.coan@alohma.com); [Weekley, Erin](#); [Edwin Buckner](#); [Evans, Tim](#)  
**Subject:** EPA Approval for an Extension of Time to Respond to the U.S. Environmental Protection Agency's April 24, 2020 Notice of Noncompliance/Request for Information for Alohma 120/Nebraska 1, Omaha, Nebraska  
**Date:** Tuesday, May 5, 2020 12:32:00 PM  
**Attachments:** [image005.png](#)  
[image002.png](#)  
[image004.jpg](#)

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Mr. Hunt,

The U.S. Environmental Protection Agency has received your May 5, 2020 email that requests an extension of time (i.e., an additional thirty (30) days) for your client, Alohma 120/Nebraska 1, to submit a response to the U.S. Environmental Protection Agency's April 24, 2020 Notice of Noncompliance/Request for Information that was transmitted to you and your client electronically via email. It is my understanding that this extension is needed due to the negative impacts from the COVID-19 pandemic which have resulted in executive orders that have effected your client's business as described in your email (attached below).

This request is hereby granted. Your response, which was due on May 24, 2020, is now due by June 23, 2020.

If you have any legal questions, please contact Erin Weekley, EPA Region 7 Office of Regional Counsel at (913) 551-7095 or by email at [weekley.erin@epa.gov](mailto:weekley.erin@epa.gov). If you have any technical questions, please contact me at (913) 551-7022 or by email at [snowden.kevin@epa.gov](mailto:snowden.kevin@epa.gov).

Kevin D. Snowden



U.S. Environmental Protection Agency  
RCRA Section  
Chemical Branch  
Enforcement & Compliance Assurance Division  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
Phone: 913-551-7022  
Email: [snowden.kevin@epa.gov](mailto:snowden.kevin@epa.gov)

---

**From:** Hunt, Nathan <[Nathan.Hunt@thompsonhine.com](mailto:Nathan.Hunt@thompsonhine.com)>  
**Sent:** Tuesday, May 05, 2020 10:41 AM  
**To:** Snowden, Kevin <[Snowden.Kevin@epa.gov](mailto:Snowden.Kevin@epa.gov)>  
**Cc:** Hunt, Nathan <[Nathan.Hunt@thompsonhine.com](mailto:Nathan.Hunt@thompsonhine.com)>  
**Subject:** Request for Extension of Time; Notice of Noncompliance - Alohma 120, Omaha, NB

Hi Kevin. My name is Nathan Hunt. I have been assisting Alohma with the RCRA Notice of



Noncompliance (the “Notice”) received from US EPA. The Notice states that Alohma shall respond to the Notice by May 24, 2020, which is thirty days from the date it was received. I am writing to request that Alohma’s deadline to respond to the Notice be extended an additional thirty days to June 24, 2020. Alohma, like many businesses, is negatively impacted by the COVID-19 pandemic and the related executive orders that have forced Alohma to close stores, lay off employees, limit its business operations, and delay travel. As a result of these impacts, Alohma will not be able to meet the initial deadline of May 24. Happy to discuss further if necessary. Thank you.

**Nathan Hunt | Counsel | Thompson Hine LLP**

Austin Landing I, 10050 Innovation Drive, Suite 400 | Dayton, Ohio 45342-4934

**Office:** 937.443.6908 | **Mobile:** 937.901.2697

**Fax:** 937.443.6635 | **Email:** [Nathan.Hunt@ThompsonHine.com](mailto:Nathan.Hunt@ThompsonHine.com)

**Web:** <http://www.ThompsonHine.com>

**[Click here for information from our COVID-19 Task Force and updates on business and legal issues related to the coronavirus.](#)**



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**Via Electronic Mail**

April 1, 2020

Ms. Rebecca Serfass  
Life Scientist  
RCRA Section (3ED22)  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Mr. Roger Bellas  
Environmental Program Manager  
Waste Management  
Pennsylvania Department of  
Environmental Protection  
Northeast Regional Office  
2 Public Square  
Wilkes-Barre, PA 18701

Re: Notification Pursuant to EPA COVID-19 Enforcement Policy  
American Zinc Recycling Corp., Palmerton, Pennsylvania  
EPA Identification No. PAD002395887

Dear Ms. Serfass and Mr. Bellas:

On behalf of American Zinc Recycling Corp. ("AZR"), I am writing to provide notification that the impacts of the COVID-19 global pandemic are likely to prevent the AZR facility in Palmerton, Pennsylvania (the "Palmerton Facility") from fully satisfying a regulatory requirement relating to the storage of lead concentrate material. This notification is submitted pursuant to the memorandum entitled *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program ("EPA COVID-19 Enforcement Policy")* issued by Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency ("EPA"), dated March 26, 2020. Consistent with the *EPA COVID-19 Enforcement Policy* and for the reasons explained below, AZR believes that the circumstances related to this matter are entitled to the exercise of enforcement discretion by EPA and the Pennsylvania Department of Environmental Protection ("PADEP").

Lead concentrate produced at the Palmerton Facility is purchased by Amlon Resources Group LLC ("Amlon") which directs the lead concentrate to a facility in Asia that reclaims metals from the material. AZR has received notice from Amlon that the foreign recycling facility has temporarily ceased operations due to a stay-in-place order issued by local authorities as a result of the COVID-19 public health emergency. Accordingly, AZR must suspend its shipments of lead concentrate. The letter issued by Amlon to AZR indicates that shipments of lead concentrate cannot be received by the Asian facility for up to three to four weeks. A copy of the letter from Amlon describing this situation is enclosed.

The circumstances preventing AZR from shipping lead concentrate relate directly to the impacts of the global COVID-19 pandemic. Nonetheless, AZR has taken steps to minimize the impact that this suspension of shipments may have on the Palmerton Facility's ability to manage lead

concentrate on-site. Specifically, since receiving the notice from Amlon, AZR has reduced production of lead concentrate at the Palmerton Facility to the extent practicable, while still enabling the Palmerton Facility to support continued operations of its steel mill customers. AZR provides a critical service to steel mills by recycling electric arc furnace dust, a listed hazardous waste. Steel mills have been designated as life-sustaining businesses under the COVID-19 Executive Order recently issued by Pennsylvania Governor Tom Wolf and under similar orders issued in other states.

The suspension of shipments to the Asian recycling facility is expected to result on April 5 in approximately twenty supersacks of the lead concentrate currently managed on-site to remain on-site in excess of 90 days from the date that the lead concentrate was generated. As the projected period of shipment disruption continues, additional supersacks of lead concentrate will also exceed the 90-day accumulation timeframe. However, AZR has reduced production activities at the Palmerton Facility in order to comply with staging requirements and maintain the required aisle spacing within the lead concentrate storage buildings during the period of suspended shipments. In addition, based on the projected period of shipment disruption described in the Amlon letter, AZR will manage the lead concentrate staged in buildings at the Palmerton facility in a manner designed to otherwise comply with applicable regulations and avoid any potential releases to the environment.

Because the specific compliance issues addressed in this letter result directly from the unanticipated and devastating impacts triggered by the COVID-19 pandemic, and considering the proactive steps being taken by AZR at the Palmerton Facility to minimize the effects and duration of this anticipated deviation from the 90-day storage requirement for lead concentrate, AZR believes that these circumstances clearly qualify for the exercise by EPA and PADEP of their discretion not to seek enforcement in this circumstance. This exercise of enforcement discretion is consistent with the principles and objectives described in the *EPA COVID-19 Enforcement Policy*.

Thank you for your consideration in this matter, and please contact me if you have any questions or need additional information.

Sincerely,



Timothy R. Basilone  
Vice President – Environmental Affairs

enclosure

cc: Joyce Howell, Esq. (via electronic mail, w/enclosure)  
Mr. Dean Ritter (via electronic mail, w/enclosure)  
Sean Robbins, Esq. (via electronic mail, w/enclosure)

**From:** [Snowden, Kevin](#)  
**To:** [Denny McGeough](#)  
**Cc:** [amie.davidson@dnr.iowa.gov](mailto:amie.davidson@dnr.iowa.gov); [Buckner, Edwin](#); [Weekley, Erin](#)  
**Subject:** Bertch Cabinet's Response to the U.S. Environmental Protection Agency's April 9, 2020 Notice of Noncompliance/Request for Information  
**Date:** Monday, May 4, 2020 9:23:00 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Mr. McGeough,

I have received your May 4, 2020 email and noted your additional concerns in responding to the U.S. Environmental Protection Agency's Notice of Noncompliance/Request for Information (NON/RIF) letter that you received via email on April 9, 2020. On April 9, 2020, the EPA granted your company a 14-day extension to respond to the EPA's NON/RIF letter indicating that your response that was due by May 9, 2020, was due May 23, 2020.

As stated in the EPA's April 9, 2020 NON/RIF letter, "EPA typically requires responses to these types of information requests within 30 days, and we request that you respond within 30 days if you can. However, EPA recognizes that the Covid-19 pandemic may be impacting your operations and causing hardships to your business. Please let us know if circumstances due to the Covid-19 pandemic impact your ability to respond to this information request. We are open to discussing appropriate flexibilities that you may need."

According to your May 4, 2020 email, "your area is reporting the highest number of new Corona cases in the nation." In addition, your email indicated that, "... the shutdown had been extended another week, meaning today (5/4) is our first day of renewed operations, rather than 4/27 as originally expected." Your email indicated that this was due to local area orders. Therefore, your company was requesting an additional seven (7) days to respond to the EPA's NON/RIF letter.

Given your facility's current situation as described in your email, the EPA is granting your company an additional seven (7) days to respond to the EPA's NON/RIF letter. Therefore, your response that was due in this office by May 23, 2020, is now due May 30, 2020.

If you have any questions or concerns, please contact me.

Kevin D. Snowden



U.S. Environmental Protection Agency  
RCRA Section  
Chemical Branch  
Enforcement & Compliance Assurance Division  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
Phone: 913-551-7022  
Email: [snowden.kevin@epa.gov](mailto:snowden.kevin@epa.gov)

---

**From:** Denny McGeough <Denny.McGeough@bertch.com>

**Sent:** Monday, May 04, 2020 7:52 AM

**To:** Snowden, Kevin <Snowden.Kevin@epa.gov>

**Cc:** amie.davidson@dnr.iowa.gov; Buckner, Edwin <Buckner.Edwin@epa.gov>; Weekley, Erin <weekley.erin@epa.gov>; White, Marlene <white.marlene@epa.gov>

**Subject:** RE: Bertch Cabinet

I believe I replied to your email at the time, but wanted to revisit our discussion.

As you may or may not know, our county has recently been the focus of national attention due to the pandemic and the actions of a local employer. Suffice to say, our area is reporting the highest number of new Corona cases in the nation.

In light of this and the low order levels, the shutdown had been extended another week, meaning today (5/4) is our first day of renewed operations, rather than 4/27 as originally expected.

I'd like to request an additional week extension for our response. I don't ask this lightly, but we are in an unusual circumstance, and technically our county still isn't "open", though most of Iowa now is.

Please advise whether the extension will be granted. Either way, our response to EPA is my priority.

Mr. McGeough,

I have noted your concerns in responding to the U.S. Environmental Protection Agency's Notice of Noncompliance/Request for Information letter that you received via email this morning (April 9, 2020), as well as your facility's scheduled two-week shutdown starting tomorrow. As stated in the EPA's letter, "EPA typically requires responses to these types of information requests within 30 days, and we request that you respond within 30 days if you can. However, EPA recognizes that the Covid-19 pandemic may be impacting your operations and causing hardships to your business. Please let us know if circumstances due to the Covid-19 pandemic impact your ability to respond to this information request. We are open to discussing appropriate flexibilities that you may need."

Given your facility's current situation as described in your email, the EPA is granting your company a 14-day extension to respond to the EPA's Notice of Noncompliance/Request for Information. Therefore, your response that was due in this office by May 9, 2020, is now due May 23, 2020.

If you have any questions or concerns, please contact me.

Kevin D. Snowden



U.S. Environmental Protection Agency  
RCRA Section



Chemical Branch  
Enforcement & Compliance Assurance Division  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
Phone: 913-551-7022  
Email: [snowden.kevin@epa.gov](mailto:snowden.kevin@epa.gov)

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**From:** Denny McGeough <[Denny.McGeough@bertch.com](mailto:Denny.McGeough@bertch.com)>  
**Sent:** Thursday, April 09, 2020 9:24 AM  
**To:** Snowden, Kevin <[Snowden.Kevin@epa.gov](mailto:Snowden.Kevin@epa.gov)>; White, Marlene <[white.marlene@epa.gov](mailto:white.marlene@epa.gov)>  
**Cc:** [amie.davidson@dnr.iowa.gov](mailto:amie.davidson@dnr.iowa.gov)  
**Subject:** Re: Bertch Cabinet

I'm in receipt of the document you attached in your email. Ordinarily, I like to begin my response very quickly but that will not be happening in this case.

First, I'm working on our Form R reporting which, of course, has a regulatory deadline I don't want to miss.

Second, we are having a 2-week shutdown starting at the end of the day today, so I won't even be able to start reviewing the report until the week of April 27.

I thought EPA and DNR would want to be advised of the situation.

Morning Mr. McGeough,  
Attached, please find correspondence relative to Bertch Cabinet. This correspondence is being transmitted to you via email. There will not be a hard copy of this correspondence mailed. If you have questions or concerns, please contact Kevin Snowden at 913-551-7022.

Oh, if we did but love others! How easily the least thing, the shutting of a door gently, the walking softly, speaking low, not making a noise, or the choice of a seat, so as to leave the most convenient to others, might become occasions of its exercise. Quote by Mere Angelique Arnauld

Marlene R. White  
SEE Employee  
U.S. EPA - Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
email address: [White.Marlene@epa.gov](mailto:White.Marlene@epa.gov)  
Phone #: 913-551-7292

**From:** [Sans, Cynthia](#)  
**To:** [Miller, Patricia G.](#)  
**Subject:** FW: [EXT] RE: Davenport Compost Facility - order for compliance  
**Date:** Wednesday, May 13, 2020 3:32:51 PM

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Is this what you need? See the emails below.

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**From:** Sans, Cynthia  
**Sent:** Thursday, May 07, 2020 8:40 AM  
**To:** Bruno, Jodi <[Bruno.Jodi@epa.gov](mailto:Bruno.Jodi@epa.gov)>; Pratt, David <[Pratt.David@epa.gov](mailto:Pratt.David@epa.gov)>  
**Subject:** FW: [EXT] RE: Davenport Compost Facility - order for compliance

FYI – Davenport Compost semi-annual report was due 5/1. I sent an email reminder with Covid language. The city requested the due date be adjusted to 6/1. I approved the extension and updated WENF.

Thanks,  
Cynthia

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**From:** Sans, Cynthia  
**Sent:** Thursday, May 07, 2020 7:47 AM  
**To:** Gleason, Nicole <[Nicole.Gleason@davenportiowa.com](mailto:Nicole.Gleason@davenportiowa.com)>  
**Subject:** RE: [EXT] RE: Davenport Compost Facility - order for compliance

Nicole,  
That's fine. It was just a reminder and I understand that things are upside down right now. Please just submit it when you are able. Thank you,  
Cynthia

---

**From:** Gleason, Nicole <[Nicole.Gleason@davenportiowa.com](mailto:Nicole.Gleason@davenportiowa.com)>  
**Sent:** Thursday, May 07, 2020 7:46 AM  
**To:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>  
**Cc:** Kay, Amy <[Amy.Kay@davenportiowa.com](mailto:Amy.Kay@davenportiowa.com)>; Linehan, Pat <[Pat.Linehan@davenportiowa.com](mailto:Pat.Linehan@davenportiowa.com)>  
**Subject:** RE: [EXT] RE: Davenport Compost Facility - order for compliance

Cynthia – thank you for the reminder! We have had several staff working remote/alternate schedules, so if you could give until June 1, I think we should be able to get it to you by then.

Thank you again and we hope you are staying well also!

Nicole Gleason  
Assistant City Administrator/Public Works Director  
**City of Davenport**

T 563-326-7734  
1200 E 46<sup>th</sup> Street, Davenport, IA 52807

[davenportiowa.com](http://davenportiowa.com)

---

**From:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>  
**Sent:** Thursday, May 07, 2020 7:25 AM  
**To:** Gleason, Nicole <[Nicole.Gleason@davenportiowa.com](mailto:Nicole.Gleason@davenportiowa.com)>  
**Subject:** [EXT] RE: Davenport Compost Facility - order for compliance

Ms. Gleason,

I hope this finds you well. I just wanted to remind you that the semi-annual report was due May 1<sup>st</sup>. Please submit the report as soon as you are able. However, given the current situation with the Covid-19 pandemic, your personal safety is of the utmost importance, so if your report will be further delayed due to the Covid-19 pandemic you are encouraged not to prepare and submit it until the safety of those involved can be assured. Furthermore, please submit the report electronically if possible. Thank you.

Cynthia Sans  
ECAD-WB/IS  
US EPA Region 7  
(913) 551-7492

---

**From:** Gleason, Nicole <[ngleason@ci.davenport.ia.us](mailto:ngleason@ci.davenport.ia.us)>  
**Sent:** Friday, November 30, 2018 1:10 PM  
**To:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>  
**Cc:** Miller, Patricia G. <[Miller.Patriciag@epa.gov](mailto:Miller.Patriciag@epa.gov)>  
**Subject:** RE: Davenport Compost Facility - order for compliance

My apologies for this error, I am attaching the correct one. We hired EnviroNet to update all of our SWPP plans at once, so I am sure the incorrect one must have been attached. Please let me know if you would like it re-sent via regular mail or if the electronic copy is adequate.

Thank you so much, have a nice weekend.  
Nicole

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**From:** Sans, Cynthia [<mailto:Sans.Cynthia@epa.gov>]  
**Sent:** Thursday, November 29, 2018 11:29 AM  
**To:** Gleason, Nicole  
**Cc:** Miller, Patricia G.  
**Subject:** Davenport Compost Facility - order for compliance

Ms. Gleason,

Thank you for the SWPPP, copies of inspection reports, and information regarding improvements to structural BMPs made in response to the Order. I have been reviewing them. The SWPPP submitted in October appears to pertain solely to industrial activities at the wastewater treatment facility rather than the Compost Facility. I wonder if I was inadvertently sent the wrong SWPPP. Please get back to me at your earliest convenience.

Thank you.  
Cynthia Sans  
US EPA Region 7  
WWPD/WENF

(913) 551-7492

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**From:** Gleason, Nicole <[npleason@ci.davenport.ia.us](mailto:ngleason@ci.davenport.ia.us)>  
**Sent:** Tuesday, October 23, 2018 9:39 AM  
**To:** Miller, Patricia G. <[Miller.Patriciag@epa.gov](mailto:Miller.Patriciag@epa.gov)>  
**Cc:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>; Kay, Amy <[akay@ci.davenport.ia.us](mailto:akay@ci.davenport.ia.us)>; Warner, Tom <[tdw@ci.davenport.ia.us](mailto:tdw@ci.davenport.ia.us)>  
**Subject:** RE: Davenport Compost Facility - order for compliance

Good morning!

I am pleased to let you know that the City of Davenport has completed the SWPP of the Compost Facility through the firm Environet. We are in the process of scheduling the training on the SWPP for a Tuesday in November.

To close our actions for this order, do need to provide the final SWPP document and the date of training?

I just want to confirm so we can stay in compliance and on time.

Thank you!  
Nicole

**Nicole Gleason**  
Public Works Director/Assistant City Administrator  
City of Davenport, Iowa

---

**From:** Miller, Patricia G. [<mailto:Miller.Patriciag@epa.gov>]  
**Sent:** Wednesday, August 01, 2018 2:11 PM  
**To:** Gleason, Nicole  
**Cc:** Sans, Cynthia  
**Subject:** RE: Davenport Compost Facility - order for compliance

Nicole;

Attached is a courtesy copy of the final Order for the Davenport Compost Facility. You will receive your official copy by mail. Please contact me or Cynthia Sans if you have any questions while implementing the requirements of the order.

Thank you for your cooperation in resolving this matter and promptly bringing the facility into compliance with its stormwater management permit.

Pat

Patricia Gillispie Miller  
Office of Regional Counsel  
US EPA, Region 7

11201 Renner Blvd.  
Lenexa, Kansas 66219

Phone: 913-551-7283  
Fax: 913-551-7925

---

**From:** Gleason, Nicole [<mailto:ngleason@ci.davenport.ia.us>]  
**Sent:** Friday, July 20, 2018 2:20 PM  
**To:** Miller, Patricia G. <[Miller.Patriciag@epa.gov](mailto:Miller.Patriciag@epa.gov)>  
**Subject:** FW: Davenport Compost Facility - order for compliance

Pat,  
Here is an electronic copy, the original should arrive next week.  
Thanks again,  
Nicole

---

**From:** Lechvar, Gina M.  
**Sent:** Friday, July 20, 2018 2:15 PM  
**To:** Gleason, Nicole  
**Subject:** RE: Davenport Compost Facility - order for compliance

Attached is the signed documentation mailed on 7/20/18 to:

Deborah Quade  
Iowa Department of Natural Resources – Office #6  
1023 W Madison  
Washington, IA 52353

Thank you,  
*Gina Lechvar*  
Administrative Assistant to the Public Works Director  
Davenport Public Works  
1200 E 46<sup>th</sup> Street  
Davenport, IA 52807  
563-326-7734

---

**From:** Gleason, Nicole  
**Sent:** Friday, July 20, 2018 1:52 PM  
**To:** Lechvar, Gina M.  
**Subject:** FW: Davenport Compost Facility - order for compliance

Can you please print single sided and prepare an envelope for trackable shipping?  
Thanks,  
Nicole

---

**From:** Miller, Patricia G. [<mailto:Miller.Patriciag@epa.gov>]



**Sent:** Thursday, July 19, 2018 9:04 AM  
**To:** Gleason, Nicole  
**Cc:** Sans, Cynthia; Kay, Amy; Warner, Tom  
**Subject:** RE: Davenport Compost Facility - order for compliance

Nicole;

We learned this morning that the Iowa Department of Natural Resources only needs copies of the City's reports under the consent agreement to be sent to Deborah Quade in IDNR Field Office #6. Attached is a revised order that changes paragraph 64 to list only IDNR Field Office #6 as recipient of any submittals. Although page breaks subsequent to this paragraph may have changed, no other text changes were made.

If you have not already signed and sent the earlier version of the order, please print and use this document. If you have already signed and mailed the order, we will just note in our records and verify by email that you are only obligated to send the documents to Field Office #6.

Sorry for any confusion this change may cause. Please feel free to contact me if you have any questions.

Thanks, Pat

Patricia Gillispie Miller  
Office of Regional Counsel  
US EPA, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Phone: 913-551-7283  
Fax: 913-551-7925

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**From:** Miller, Patricia G.  
**Sent:** Wednesday, July 18, 2018 2:23 PM  
**To:** 'Gleason, Nicole' <[npleason@ci.davenport.ia.us](mailto:ngleason@ci.davenport.ia.us)>  
**Cc:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>; Kay, Amy <[akay@ci.davenport.ia.us](mailto:akay@ci.davenport.ia.us)>; Warner, Tom <[tdw@ci.davenport.ia.us](mailto:tdw@ci.davenport.ia.us)>  
**Subject:** Davenport Compost Facility - order for compliance

Nicole;

Thank you for the information and pictures you provided regarding the measures taken at the compost facility to date. We recommend that you continue to monitor the improvements frequently to assess their effectiveness. If they do not perform well you should consult with your contractor and consider different or additional controls to ensure the facility meets its permit requirements.

I've attached the final Administrative Order on Consent to this email for your signature. All the edits identified in the draft version I circulated yesterday have been incorporated. In addition, I changed the time frame for compliance in paragraph 53 from 60 to 120 days to better reflect the expected

completion and reporting date of November 1, 2018. Please let me know if you have any additional questions or comments. Otherwise, please print and sign page 15 of the order and return the entire order to me at the address below. Please use a trackable method of delivery such as certified mail or overnight mail. When I receive it from you, EPA will sign the document, fill out the certificate of service and distribute copies.

We greatly appreciate your cooperation in quickly resolving this matter and implementing stormwater management improvements at the Davenport Compost Facility. If you have any questions regarding your compliance activities, please feel free to contact either Cynthia Sans or me.

Sincerely, Pat

Patricia Gillispie Miller  
Office of Regional Counsel  
US EPA, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Phone: 913-551-7283

Fax: 913-551-7925

---

**From:** Gleason, Nicole [<mailto:npleason@ci.davenport.ia.us>]

**Sent:** Wednesday, July 18, 2018 9:37 AM

**To:** Miller, Patricia G. <[Miller.Patriciag@epa.gov](mailto:Miller.Patriciag@epa.gov)>; Kay, Amy <[akay@ci.davenport.ia.us](mailto:akay@ci.davenport.ia.us)>; Warner, Tom <[tdw@ci.davenport.ia.us](mailto:tdw@ci.davenport.ia.us)>

**Cc:** Sans, Cynthia <[Sans.Cynthia@epa.gov](mailto:Sans.Cynthia@epa.gov)>

**Subject:** RE: Davenport EPA letter - Article No. 7014 1200 0000 6122 4121

Pat,

Thank you as well, I agree it was very productive.

Since the cost to the City to rectify the remaining open items is within our operational budgets and below council approval levels, I will be able to sign this consent order, so there will not be any delay. We do agree to the changes in this proposed red lined document.

I have also attached the photos and commentary of the actions taken to improve the outfalls. Please let me know if there are any additional comments on these actions per our conversation on the condensation yesterday.

Thank you again,  
Nicole

**Nicole Gleason**  
Public Works Director/Assistant City Administrator





March 26, 2020

***Via Electronic Mail: mceathron.kimberly@epa.gov***

Douglas McKenna, Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
290 Broadway, 20th Floor  
New York, NY 10007-1866

Re: Response to Request for Information - CWA-IR-19-018  
U.S. Concrete Inc./Ferrara Bros., LLC

Dear Mr. McKenna,

This letter serves as Ferrara Bros./U.S. Concrete, Inc.'s ("US Concrete") follow-up response ("Response") to the Request for Information ("RFI") issued by the United States Environmental Protection Agency ("EPA") related to 1) the College Point Plant located at 120-05 31<sup>st</sup> Avenue, Flushing, New York, 2) the Smith Street Plant located at 381 Hamilton Avenue, Brooklyn, New York, and 3) the Chelsea Road Plant located at 333 Chelsea Road, Staten Island, New York. The initial RFI was issued July 2, 2019 with clarifying questions sent on December 2, 2019 by EPA. US Concrete submitted a response on December 15, 2019 that was accepted by the EPA on January 29, 2020. The response detailed specific actions to be taken by US Concrete with varying deadlines. Many of these actions involved structural site changes which have been disrupted by recent events as well as regulatory staff schedule changes which are undetermined at this time.

Due to the unprecedented events and work stoppages currently happening around the country, but specifically in the tri-state area of NY, NJ, and PA, completion of this structural work has been severely hampered and will likely be delayed until a normal work schedule can be resumed. At this time, we are respectfully requesting a 4-month extension of original deadlines listed below. Please note that these dates are dependent on the resumption of normal operating procedures, on both a company and government level, by at least June 1.

This Response has been prepared by US Concrete's environmental, health, and safety consultant, Compliance Plus Services, Inc. ("CPS"), who has been retained to assist with regulatory permitting and compliance issues for the sites identified in the RFI as well as sites elsewhere in the New York and New Jersey regions.

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## **1. Regarding the College Point Plant -**

### **Status:**

In order to increase the process water capacity of the site, CPS has developed a long-term strategy that would include on-site treatment of process water to allow treated process water to discharge to a newly relocated discharge point. There is an existing CO<sub>2</sub> treatment system and stepped settling basin system on-site that have no current discharge capability due to their location. The proposed permanent design changes have changed from an application for an individual SPDES permit to a Request for Modification to the existing permit. This request will be submitted to NYSDEC and will involve the addition of a second discharge point to the permit. US Concrete expects this action can be completed by the proposed deadline of August 1, 2020, assuming regular work schedules are resumed by regulators no later than June 1, 2020. Since these site modifications will result in changes to the SWPPP, a fully revised SWPPP will also be submitted by the date of August 1, 2020.

Additionally, US Concrete committed to improvements to the site trench drain system which will be enhanced to help ensure that the type of water accumulation that was present during the EPA inspection will not be repeated. The concrete block wall that is intended to contain any overflow will also be sealed so water cannot flow beneath it. The trench drain improvements will fix cracked areas and allow for more efficient water flow and better fitting grate covers. The established deadline for these improvements is April 1, 2020. At this time, an extension of that deadline until August 1, 2020 is requested.

## **2. Regarding the Smith Street Plant -**

### **Status:**

Planned site upgrades to improve water management at the facility include paving of the site, installation of a second washout pit, and installation of a rollover curb to retain additional water on the site. In addition to improving the functionality of the trench drain, these improvements will further increase the water storage capacity of the site. At this time, improvements to the trench drain are complete, but the paving has not been completed. The original deadline for these activities is also April 1, and again an extension is requested until August 1, 2020.

These improvements are temporary measures that will ultimately continue to mandate the removal of water in winter months when it is difficult to reuse the water for concrete production. As is in process at their sites elsewhere in the New York City, the permanent plan for this site is to connect to the New York City combined sewer system which would allow the discharge of process water that has been treated with a pH neutralization system to the sewer system upon completion of a Wastewater Quality Control Application with





the New York City Department of Environmental Protection. This process is lengthy due to design and approval conditions and will require six months to be completed. Due to disruption in the work schedules of NYCDEP regulators who are not corresponding on the status of our current permit applications, this process will likely take longer than the proposed deadline of August 1, 2020.

Additionally, the permanent site modifications to the concrete wall along the Gowanus Canal have been initiated but are not finalized, and a request to the initial deadline of April 1 until August 1, 2020 is requested.

### **3. Regarding the Chelsea Road Plant -**

#### **Status:**

The agreed upon response for this facility is the construction of an additional containment area. US Concrete is respectfully requesting for the time period for completion of these site modifications to be extended until August 1, 2020.

Please feel free to contact me at 215.734.1414 or [csolor@complianceplusservices.com](mailto:csolor@complianceplusservices.com) if you have any questions or concerns.

Sincerely,

Cristen L. Solor, Senior Environmental Scientist  
**Compliance Plus Services, Inc.**

[www.complianceplusservices.com](http://www.complianceplusservices.com):

Premier Industry Provider of Environmental and Safety Services

240 Gibraltar Road, Suite 100

Horsham, PA 19044

Ph: 215-734-1414

Fax: 215-734-1424

1-866-976-PLUS (7587)



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 673D AIR BASE WING  
JOINT BASE ELMENDORF-RICHARDSON, ALASKA

MEMORANDUM FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 10  
ATTN: KATIE MCCLINTOCK, AIR TOXICS & ENFORCEMENT SECTION  
1200 Sixth Avenue, Suite 155  
Mail Code: 20-C04  
Seattle WA 98101

FROM: 673 ABW/CC  
10471 20<sup>th</sup> Street, Suite 139  
JBER AK 99506-2999

SUBJECT: Request for 90-Day Extension of November 2019 Compliance Plan and Schedule for Joint Base Elmendorf-Richardson (JBER) Hospital Emergency Generators Subject to the New Source Performance Standard for Stationary Compression Ignition Internal Combustion Engines

1. On 7 November 2019, the United States Air Force (USAF) submitted a compliance plan and schedule for bringing the three (3) emergency generator engines at the Joint Base Elmendorf-Richardson (JBER) Hospital Plant into compliance with the fuel standards found in Title 40, Code of Federal Regulations (CFR) Part 60, Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (NSPS). The USAF proposed removing the Jet Propulsion Fuel Grade 8 (JP-8) from all three 25,000 gallon fuel storage tanks located at the JBER Hospital Plant and replacing it with ultra-low sulfur diesel ULSD by **31 March 2020** to achieve compliance with the NSPS.
2. JBER Hospital Plant staff are actively engaged with seven separate organizations on base, including two major subcommands of the Defense Logistics Agency (DLA), to accomplish all of the necessary action to change over the fuel tanks from JP-8 to ULSD by 31 March 2020. These actions include:
  - a. scheduling JBER teams to drain JP-8 from and inspect the tanks before refilling with ULSD;
  - b. coordinating disposal of 75,000 gallons of JP-8;
  - c. directing maintenance staff to perform new tasks they have never done before;
  - d. determining the quantity of ULSD for the initial fuel purchase based on historic fuel usage; and
  - e. working with DLA to execute procurement and delivery of the ULSD
3. To date, JBER has removed all of the JP-8 from two of the three tanks. The DLA solicitation for delivery of 15,000 gallons of ULSD was awarded on 17 March 2020. The fuel vendor delivered 8,000 gallons of ULSD to the first and second tanks on 19 March 2020. The second delivery of 7,000 gallons of ULSD occurred on 26 March 2020, resulting in 9,000 gallons in one tank and 6,000 gallons in the second tank. The two tanks contained residual JP-8 fuel, and when the ULSD was added, the result was a sulfur content above the regulatory limit. Further dilution of the fuel is required. Therefore, JBER must drain the

remaining storage tank of JP-8, clean the tank to remove residual JP-8, and coordinate with the fuel vendor for the delivery of additional ULSD for all three tanks.

4. JBER respectfully requests an extension until 30 June 2020 to its NSPS Compliance Plan and Schedule, given the current schedule is contingent upon JBER's ability to schedule a team to remove JP-8 from the remaining tank, contract out the cleaning of the fuel tank to remove residual material, and the fuel vendor delivering additional ULSD to all three tanks. This request also takes into account the potential for reduced operational capacity on the installation in response to COVID-19.

5. JBER will notify the Environmental Protection Agency and Alaska Department of Environmental Conservation when compliance is achieved as soon as practicable.

6. If you have any questions regarding this request, please contact the JBER Air Quality Program Manager, (b) (6) at 907-384-1361 or (b) (6) or JBER Installation Management Flight Chief, (b) (6) at 907-384-2002 or (b) (6)

7. Based on the information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete.

(b) (6)   
Colonel, USAF  
Commander (b) (6)

Attachment:

2019-1107 NSPS Subpart IIII Compliance Plan and Schedule

cc: Ms. Kelly McFadden, USEPA Region 10, Air Permits and Toxics Branch Chief  
Mr. Geoffrey Glass, USEPA Region 10, Air Permits and Toxics Branch  
Mr. John Pavitt, USEPA Region 10, Anchorage Operations Office  
Mr. James Plosay, ADEC  
Mr. Moses Coss, ADEC  
(b) (6) PACAF, AFIMSC Det 2

**From:** [McClintock, Katie](#)  
**To:** [Marshallonis, Dino](#)  
**Cc:** [Jencius, Morgan](#)  
**Subject:** COVID 19 DEVIATION - FW: NSPS Compliance Plan Extension Request for JBER, AK  
**Date:** Tuesday, April 14, 2020 6:56:36 PM  
**Attachments:** [ATT00001.txt](#)  
[Extension request for NSPS Compliance Plan RO Signed.pdf](#)  
[image001.jpg](#)

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Katie McClintock  
Section Chief  
Air Toxics and Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 10  
1200 Sixth Ave, Suite 155  
Mail Code 20-C04  
Seattle, WA 98101  
Phone: (206) 553-2143

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**From:** (b) (6) USAF PACAF 673 CES/CEI (b) (6)  
**Sent:** Friday, April 3, 2020 1:00 PM  
**To:** McClintock, Katie <McClintock.Katie@epa.gov>  
**Cc:** McFadden, Kelly <McFadden.Kelly@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>;  
Coss, Pablo M (DEC) <Moses.coss@alaska.gov>; DEC.AQ.Airreports@alaska.gov; (b) (6)  
(b) (6) USAF PACAF 673 CES/CEIEC (b) (6) ; (b) (6) USAF  
PACAF 673 CES/CEIE (b) (6) USAF  
PACAF/PACAF/AFIMSC Det 2/CEV (b) (6) USAF  
PACAF 673 CES/CEI (b) (6) 3 USAF PACAF 673 ABW/JA  
(b) (6)  
**Subject:** Re: NSPS Compliance Plan Extension Request for JBER, AK

Ms. McClintock,

I've attached the extension request signed by our RO. We'll send the original via certified mail.

Have a great and safe weekend.

V/r,

(b) (6) GS-13, USAF  
Chief, Installation Management  
673d Civil Engineer Squadron  
COMM: 907-384-3003 (DSN: 317)  
(b) (6)

---

**From:** McClintock, Katie <[McClintock.Katie@epa.gov](mailto:McClintock.Katie@epa.gov)>  
**Sent:** Wednesday, April 1, 2020 11:50:34 AM  
**To:** (b) (6) USAF PACAF 673 CES/CEI (b) (6)  
**Cc:** McFadden, Kelly <[McFadden.Kelly@epa.gov](mailto:McFadden.Kelly@epa.gov)>; Glass, Geoffrey <[GLASS.GEOFFREY@EPA.GOV](mailto:GLASS.GEOFFREY@EPA.GOV)>;  
Coss, Pablo M (DEC) <[Moses.coss@alaska.gov](mailto:Moses.coss@alaska.gov)>; [DEC.AQ.Airreports@alaska.gov](mailto:DEC.AQ.Airreports@alaska.gov)  
<[DEC.AQ.Airreports@alaska.gov](mailto:DEC.AQ.Airreports@alaska.gov)>; (b) (6) USAF PACAF 673 CES/CEIEC  
(b) (6) USAF PACAF 673 CES/CEIE  
(b) (6) USAF PACAF/PACAF/AFIMSC  
Det 2/CEV (b) (6) USAF PACAF 673 CES/CEI  
(b) (6) USAF PACAF 673 ABW/JA  
<[john.page.24@us.af.mil](mailto:john.page.24@us.af.mil)>  
**Subject:** [Non-DoD Source] RE: NSPS Compliance Plan Extension Request for JBER, AK

Thank you. I appreciate you submitting it electronically and sending the wet ink when you are able.  
I hope are able to stay safe as well.



---

Katie McClintock  
Section Chief  
Air Toxics and Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 10  
1200 Sixth Ave, Suite 155  
Mail Code 20-C04  
Seattle, WA 98101  
Phone: (206) 553-2143

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**From:** (b) (6) USAF PACAF 673 CES/CEI <[jenni.dorsey-spitz@us.af.mil](mailto:jenni.dorsey-spitz@us.af.mil)>  
**Sent:** Wednesday, April 1, 2020 12:07 PM  
**To:** McClintock, Katie <[McClintock.Katie@epa.gov](mailto:McClintock.Katie@epa.gov)>  
**Cc:** McFadden, Kelly <[McFadden.Kelly@epa.gov](mailto:McFadden.Kelly@epa.gov)>; Glass, Geoffrey <[GLASS.GEOFFREY@EPA.GOV](mailto:GLASS.GEOFFREY@EPA.GOV)>;  
Coss, Pablo M (DEC) <[Moses.coss@alaska.gov](mailto:Moses.coss@alaska.gov)>; [DEC.AQ.Airreports@alaska.gov](mailto:DEC.AQ.Airreports@alaska.gov); (b) (6)  
USAF PACAF 673 CES/CEIEC (b) (6) USAF  
PACAF 673 CES/CEIE (b) (6) USAF  
PACAF/PACAF/AFIMSC Det 2/CEV (b) (6) USAF  
PACAF 673 CES/CEI (b) (6) PACAF 673 ABW/JA  
(b) (6)  
**Subject:** NSPS Compliance Plan Extension Request for JBER, AK



Ms. McClintock,

Please see attached NSPS Compliance Plan Extension Request for the three (3) emergency generator engines at Joint Base Elmendorf-Richardson (JBER) Hospital Plant. The extension request is sitting at the Air Base Wing office, awaiting signature by the Responsible Office (RO); however, given the current COVID-19 pandemic, Public Emergency Declaration for JBER, emergency response/planning efforts at JBER and Mission Essential only manning, we are experiencing delays with our internal routing and obtaining signature with many personnel out of the office. In the interim, I've signed the attached letter. As soon as we receive a copy of the letter from the RO, we will promptly send it both certified mail and electronically.

(b) (6) (JBER Air Quality Manager) is working remotely, but we have system latency issues. If any questions or concerns arise, please don't hesitate to reach out to me during this time.

Hope everyone is safe and healthy.

V/r,

(b) (6) USAF  
Chief, Installation Management Flight  
673d Civil Engineer Squadron  
Joint Base Elmendorf-Richardson, AK  
COMM: (907) 384-3003 (DSN: 317)  
(b) (6)



# Mille Lacs Band of Ojibwe

## Public Works Department

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### **MEMORANDUM**

**To: Dean Maraldo, USEPA Region 5 Compliance Officer**

**From: Sean Racelo, ML Water and Wastewater Supervisor, Signature:**

**Re: Duckweed Management Strategy Moving Forward**

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The East Lake (Apple Orchard) lagoon system has historically had a significant amount of duckweed over the top of both ponds cells every year. Duckweed is a very small, 1-3 leaved flat, oval shaped, light-green plant that creates a floating mat on the surface of the water. It is more common in areas where the water is stagnant and high, and also more common in late summer as the water is warmer. The Minnesota Pollution Control Agency (MPCA) has found duckweed to be helpful in limiting the growth of other harmful aquatic plants. But if the duckweed growth is excessive, then it will block sunlight from penetrating the cell and the dissolved oxygen (DO) will drop below acceptable levels. MPCA did caution against the common use of herbicide as this will both kill all plants that are useful in the treatment process, and the decomposing plants could cause a significant drop in the DO of the pond.

Per the 2020 EPA Compliance Assistance Plan, the Band was required to draft a plan to address the chronic duckweed problem prior to the spring 2020 discharge, with anticipated dates for completing each action. Due to the fact that duckweed is a native plant that can travel on the feet of the aquatic animals that visit the lagoons, it is not the goal of the Mille Lacs Public Works to completely remove the duckweed from the East Lake lagoons. Instead, the Mille Lacs Public works have put together a plan to limit the growth of the duckweed through mechanical methods, and then is prepared to sparingly use approved chemical methods to kill the duckweed when it becomes too prevalent to control by other means.

#### Duckweed Growth Management Strategy

The primary strategy in managing the duckweed growth is to mechanically skim the duckweed off of the surface of the ponds, and then transfer it to where it won't end up back in the pond once it rains. Next to the primary lagoon pond is the borrow area from when soil was needed to build up the ponds. This would be a perfect place for the duckweed to be piled after removal from the pond in order to keep it from floating away or back in to the ponds during a heavy rain. Once the duckweed starts to develop in either pond, the operator should spend a few hours

each week to skim off as much as possible. Some additional supply will need to be purchased to help the operator to better skim and transport the duckweed.

If the duckweed continues to grow and is not able to be controlled by mechanical methods, an herbicide will then be needed to kill it off. The following parameters will be used to signal the need for an herbicide to be used.

- If the ponds start to become more than 50% covered by duckweed. This is a significant amount of the surface area that is blocked from the sunlight and air.
- If the DO levels in the pond drops below normal levels. The operator will need to take DO readings from at least 2 locations per cell. If the DO levels are below 2 mg/l early in the morning, or 5 mg/l in the afternoon, then the cell is not oxygenated enough for normal treatment processes.

The MPCA has approved the herbicide called diquat to be used on domestic wastewater lagoon ponds to kill aquatic plants. This herbicide is sold under the name "Reward." It should be noted that this contact herbicide will kill any aquatic plants it comes in contact with, so should be used as sparingly as possible. The herbicide should be sprayed directly on the duckweed floating mat, and then repeated a second time if necessary.

#### Steps for Implementation of the Duckweed Management Plan

In order to implement this plan, the following task will need to be completed by the Public Works staff by the following dates:

- By June 1<sup>st</sup>:
  - Purchase a floating parachute skimmer, a landscape rake, a scoop shovel, and wheel barrow to both skim, collect, and transport the duckweed away from the ponds.
  - Train the main operator on the process and expectation of minimizing the pond duckweed.
- By July 1<sup>st</sup>:
  - Purchase five gallons of the Herbicide "Reward" (enough for 2 treatments) to have available if needed.
  - Purchase a backpack sprayer with extendable handle to be able to spray at least 4 feet away from the operator.

This plan should be revisited in January, 2021 to review if any improvements could be made to this management strategy, or if additional equipment is needed.

**From:** [Sean Racelo](#)  
**To:** [Maraldo, Dean](#); [Colletti, John](#)  
**Cc:** [Michael.Termont@ihs.gov](#); [Brian Scheinost](#); [Sean Racelo](#)  
**Subject:** RE: Mille Lacs Band and Apple Orchard Compliance Plan  
**Date:** Friday, April 17, 2020 3:00:08 PM  
**Attachments:** [CCF\\_000049.pdf](#)

---

Here is a copy of our Duckweed management Strategy Report.

Thank you for the Extension. It helped us come up with a better strategy for the Duckweed.

Sean Racelo

---

**From:** Sean Racelo  
**Sent:** Friday, April 10, 2020 4:23 PM  
**To:** 'Maraldo, Dean' <Maraldo.Dean@epa.gov>; Colletti, John <colletti.john@epa.gov>  
**Cc:** Michael.Termont@ihs.gov; Brian Scheinost <Brian.Scheinost@millelacsband.com>  
**Subject:** RE: Mille Lacs Band and Apple Orchard Compliance Plan

I'm thinking a two week window should be good enough. To write up a draft and procedure.

Only on the Chronic Duck Weed problem. I believe we have the rest of the First Month Compliance plan. Taken care of?

Let me know if you need anything else.

Thanks

Sean Racelo

---

**From:** Maraldo, Dean [<mailto:Maraldo.Dean@epa.gov>]  
**Sent:** Friday, April 10, 2020 4:11 PM  
**To:** Sean Racelo <[Sean.Racelo@millelacsband.com](mailto:Sean.Racelo@millelacsband.com)>; Colletti, John <colletti.john@epa.gov>  
**Cc:** [Michael.Termont@ihs.gov](#); Brian Scheinost <[Brian.Scheinost@millelacsband.com](mailto:Brian.Scheinost@millelacsband.com)>  
**Subject:** RE: Mille Lacs Band and Apple Orchard Compliance Plan

Thanks Sean. Please provide a specific amount of time or a revised delivery date for any item you need more time to complete due to COVID-19.

- Dean

=====  
Dean Maraldo  
Water Enforcement & Compliance Assurance Branch  
U.S. EPA - Region 5  
77 West Jackson Blvd. (ECW-15J)



Chicago, Illinois 60604  
ph: (312) 353-2098  
fax: (312) 385-5394  
e-mail: [maraldo.dean@epa.gov](mailto:maraldo.dean@epa.gov)  
<http://www.epa.gov/enforcement/>

---

**From:** Sean Racelo <[Sean.Racelo@millelacsband.com](mailto:Sean.Racelo@millelacsband.com)>  
**Sent:** Friday, April 10, 2020 4:09 PM  
**To:** Maraldo, Dean <[Maraldo.Dean@epa.gov](mailto:Maraldo.Dean@epa.gov)>; Colletti, John <[colletti.john@epa.gov](mailto:colletti.john@epa.gov)>  
**Cc:** [Michael.Termont@ihs.gov](mailto:Michael.Termont@ihs.gov); Brian Scheinost <[Brian.Scheinost@millelacsband.com](mailto:Brian.Scheinost@millelacsband.com)>  
**Subject:** RE: Mille Lacs Band and Apple Orchard Compliance Plan

Hello Dean

I'm going to need a lit bit more time on the Duck Weed solution. We're working on a draft to address the issue.

Thank you for your help

Sean Racelo

---

**From:** Maraldo, Dean [<mailto:Maraldo.Dean@epa.gov>]  
**Sent:** Thursday, April 09, 2020 10:48 PM  
**To:** Sean Racelo <[Sean.Racelo@millelacsband.com](mailto:Sean.Racelo@millelacsband.com)>; Colletti, John <[colletti.john@epa.gov](mailto:colletti.john@epa.gov)>  
**Cc:** [Michael.Termont@ihs.gov](mailto:Michael.Termont@ihs.gov); Brian Scheinost <[Brian.Scheinost@millelacsband.com](mailto:Brian.Scheinost@millelacsband.com)>  
**Subject:** RE: Mille Lacs Band and Apple Orchard Compliance Plan

Thank you Sean. Please let me know if you need more time for any of the deliverables due to the COVID-19 crisis. Please be safe.

- Dean

=====  
Dean Maraldo  
Water Enforcement & Compliance Assurance Branch  
U.S. EPA - Region 5  
77 West Jackson Blvd. (ECW-15J)  
Chicago, Illinois 60604  
ph: (312) 353-2098  
fax: (312) 385-5394  
e-mail: [maraldo.dean@epa.gov](mailto:maraldo.dean@epa.gov)  
<http://www.epa.gov/enforcement/>

---

**From:** Sean Racelo <[Sean.Racelo@millelacsband.com](mailto:Sean.Racelo@millelacsband.com)>

**Sent:** Thursday, April 9, 2020 11:07 AM

**To:** Colletti, John <[colletti.john@epa.gov](mailto:colletti.john@epa.gov)>; Maraldo, Dean <[Maraldo.Dean@epa.gov](mailto:Maraldo.Dean@epa.gov)>

**Cc:** [Michael.Termont@ihs.gov](mailto:Michael.Termont@ihs.gov); Brian Scheinost <[Brian.Scheinost@millelacsband.com](mailto:Brian.Scheinost@millelacsband.com)>; Sean Racelo <[Sean.Racelo@millelacsband.com](mailto:Sean.Racelo@millelacsband.com)>

**Subject:** Mille Lacs Band and Apple Orchard Compliance Plan

Hello

Here is the map of the Apple Orchard / East lake collection system.

I have also corrected May of 2019 NetDMR.

We are also working on the Tracery study report for the discharge. That we attempted in the fall of 2016.

And also a plan for the Duck weed problem in the lagoons in east lake.

Thank you

Sean Racelo

### Certificate of Service

I, Theodore A. Saulnier, certify that this the 29<sup>th</sup> day of April 2020, I have served the following document: **DEFENDANTS MOTION FOR RELIEF FROM JUDGEMENT PURSUANT TO FED. R. CIV. P. RULE 60(B)(6)** and **DEFENDANTS MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RELIEF FROM JUDGEMENT PURSUANT TO FED. R. CIV. P. RULE 60(B)(6)** on the Plaintiff, United States of America, by sending by electronic mail to counsel for the Plaintiff, Attorney David L. Gordon and Attorney Ruben Gomes via the CM/ECF electronic filing system.

Theodore A. Saulnier  
P.O. Box 1524  
N. Falmouth, MA 02556  
774-563-1298  
BBO# 560643  
tsaulnierjd@yahoo.com

April 29, 2020



**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

United States,  
Plaintiff

v.

C.A. 1:16-CV-10767-DJC

R. M. Packer Co. Inc.,  
Defendant

United States of America

v.

C.A. 1:16-CV-10769-DJC

Tisbury Towing and Transportation Co. Inc.

**DEFENDANTS MEMORANDUM IN SUPPORT OF THEIR MOTION  
FOR RELIEF FROM JUDGEMENT PURSUANT TO  
FED. R. CIV. P. RULE 60(B)(6)**

Now come the Defendants, R. M. Packer Co. Inc. (Packer) and Tisbury Towing and Transportation Co. Inc., (Tisbury Towing) in the above captioned matter, and pray that this honorable court relieve the defendants of the monetary fines associated with the judgment in these consolidated cases. The defendants state that the present circumstances resulting from the COVID 19, virus pandemic and associated unprecedented shutdown of large swaths of the United States economy has halted all but a small fraction of the defendant's cash flow. Further, changes in place prior to the pandemic, in two areas of R. M. Packer Co. Inc.'s service, have created additional strain on the company. In support of this motion the defendant states:

**Overview:**

The Packer company is a retail and bulk dealer of gasoline, diesel fuel and home heating fuels, located on the island of Martha's Vineyard. Martha's Vineyard is largely a resort island and summer destination for vacationers. The population of Martha's Vineyard is near 16,000 year-round and more than 100,000 during the summer months of July and August. Packer relies largely upon the summer tourist season for its profit generating activities and to a lesser extent on the "shoulder" seasons of the spring and fall for these profits.

Tisbury Towing shares the same ownership and management as Packer and in part it is in the business of transporting gasoline and fuels to the Packer terminal in Vineyard Haven, from the mainland, by tug boats and barge. Tisbury Towing also transports materials such as gravel stone, sand, soils and modular homes from the mainland to the Packer terminal in Vineyard Haven. Further, Tisbury Towing transports all heavy equipment which will not fit on the Woods Hole, Nantucket, Vineyard Haven Steamship Authority (Steamship Authority) vessels to the island.

**Case History:**

The Defendants were found liable at trial with various Clean Air Act and Clean Water Act violations by a decision by J. Casper on September 30, 2019. The Court ordered the Defendants, Packer and Tisbury Towing to pay an initial payment of \$115,700.00 and \$14,300.00, respectively. (see 1:16-CV-10767-DJC D 91) Further, the Defendants were ordered to perform certain injunctive tasks and acts related to testing, maintenance and cleanup

of the Packer and Tisbury Towing real property and equipment. (see 1:16-CV-10767-DJC D 84 and D85)

The Defendants remitted the first payments of \$115,700.00 and \$14,300.00 respectively to the United States via the usual course and by the date so ordered, November 30, 2019. Then the companies entered their less than profitable time of year, the winter.

**Applicable Law:**

Language in Fed R. Civ. P. rule 60(b)(6) states in part, “(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons.” ... “(6) any other reason that justifies relief.” With respect to the application of Fed. R. Civ. P. rule 60(b) the Court in United States v. A. Harvey Gould 301 F.2d 353 (1962) ruled that in applying the rule several factors must be considered. The Court stated,

“...whether there are any intervening equities which make it inequitable to grant relief; and any other factor that is relevant to the justice of the judgment under attack, bearing always in mind that the principle of finality of judgments serves a most useful purpose for society, the courts, and the litigants — in a word, for all concerned.”

In the present case no one had the information now present regarding this health emergency and the resulting financial fallout. The defendant was not able to argue or defend its present dire financial situation. Further, this financial situation was caused by the government and was not caused by either defendant. These facts show that there are “intervening equities” here which make it equitable to grant the relief requested.

**Packer and Tisbury Towing Position:**

The past winter was a particularly mild one with above average temperatures over-all and few snow events. This was helpful to Packer and Tisbury Towing in addressing the injunctive relief ordered by the Court. This injunctive relief required certain events be accomplished within 30 days, 60 days, 90 days, 120 days, 180 days and one-year periods, depending upon the given mandate. Packer began addressing the issues and reported it's progress to the EPA upon the 30-day time limit, having met all required 30-day deadline issues. Then Packer endeavored to meet the 60-day deadline required issues, and met all of the mandates within that time period. Packer again sent documentation and other evidence to the EPA showing compliance with the injunctive relief order. The EPA then notified Packer that the reporting of progress was insufficient, and, for the first time sent Packer a form to be completed for each injunctive mandate. Packer then redocumented it's progress, using the EPA format. Also, Packer then sought to address the 90-day and 120-day issues contained in the injunctive relief order.

In mid-March Packer and Tisbury Towing had completed all but two mandated actions and had documented the same using the EPA format. The remaining issues were; one due on March 29<sup>th</sup> and involved a report by Packer's air pollution expert, requiring him to travel to the island for part of his reporting, and one requiring the installation of a cut-off switch on Packer's vapor recovery unit (VRU). Packer's contracted maintenance company found that there was already a switch on the VRU, that merely needed to be wired. Packer and Tisbury Towing have submitted the required documentation which the EPA is presently reviewing.

Simultaneously with this reporting work, the COVID 19 virus began to become a threat to the health of the general public and the Packer and Tisbury Towing air expert decided to postpone travel on the Steamship Authority's vessels, fearing for his safety. It is Packers information that its air expert contacted the EPA and made arrangement for a delay in reporting until it could make a future visit when the pandemic eases. Shortly thereafter Massachusetts Governor Charlie Baker issued a wide-ranging shutdown of all non-essential businesses in the state. The maintenance contractor was determined to be "non-essential" and advised by the state government to "shelter in place" and not travel. The maintenance contractor has heeded the government's "shelter in place" mandate although it has not notified the EPA of its decision, according to Packer's knowledge. That shutdown continues at the time of this writing with little sign of it easing soon.

The financial effect of the shutdown on the Packer company has been enormous. Even though Packer is considered an "essential" business, most customers are not. With people "sheltering in place" and staying home, there has been a dramatic decrease in vehicular traffic on the island. This has caused the Packer gasoline business to be reduced by 50% and the diesel business by 95%. This drop in the diesel business was exacerbated by a local order halting all building construction in most of the island towns. Further, the heating season is waning and sales of heating fuel is rapidly decreasing as it normally does at this time of year.

The fate of business on the island, including Packer this summer, is in serious question. Even if all businesses could open today it is questionable as to whether Packer can successfully sustain itself from the losses incurred during this pandemic. Some large hotels are reporting a

40% cancellation rate of summer reservations. Builders are idle, restaurants are closed and movement around the island is now at a pace which is less than during normal winter months. The Steamship Authority has sought a financial bail-out from the state and warned that without a bail-out they would not have the funding to operate after May 31, 2020. This as a result of a severe drop in ridership associated with the pandemic.

Tisbury Towing is facing a similar fate. It too has been designated as an essential business, but 99% of its customer base is not. Tisbury Towing's business is at a virtual standstill. It only barges fuel for Packer now and as noted above there is only one-half of the usual demand presently, from Packer.

Given the state of the economy, and this pandemic, Packer and Tisbury Towing have a long way to go to get back to normal, financially. Further complicating this matter are two changes in the Packer company's gasoline and diesel distribution system.

First, the Packer company has supplied the small nearby island of Gosnold with gasoline for their cars and for the marina, run by the town, for about forty years. Also, Packer has supplied Gosnold with home heating fuel for much of the island's homes and diesel fuel for the island's powerplant. This powerplant is the island's source of electricity along with a solar panel system which augments the diesel generators. In order to carry out this supply Packer installed a small underground tank farm on town owned land leased to Packer. In 2019 the Massachusetts Department of Environment (DEP) ordered Packer to install new equipment at this tank farm. Ralph M. Packer Jr., Packer's president, researched the equipment being required and found that

the cost was excessive and some of the equipment had not yet been invented or produced, further causing the cost of this project to skyrocket. After calculating the cost of the equipment being required and the resulting necessary increase in the price for gasoline and diesel on Gosnold, Packer made the decision that it was not economically feasible to complete these changes. The decision was made by Packer to decommission the storage tanks, remove them from the ground, remove the barge docking equipment and discontinue servicing Gosnold as it had been doing for decades. Packer has decommissioned the tanks and is waiting for the cancellation of the “shelter in place” order, from the state, in order to remove the tanks and equipment. In place of the present fuel service Packer will now deliver gasoline, home heating fuel and diesel fuel via barged tank trucks to the island. This has put additional strain on the Packer finances.

The second change came to Packer’s marine fueling pier in Edgartown harbor. For years Packer leased a fuel pier from the Town of Edgartown. Packer installed underground storage tanks near the pier so as to store product awaiting sale on the pier. The area in which the tanks are located is susceptible to excessive water conditions during rain events and extreme high tides. These tanks lie at the bottom of a paved road which ends at the edge of Edgartown harbor. During rain events water intrusion, into the diagnostic equipment related to the tank, has been an issue and Packer has been attempting to get the town to address this issue for years. The DEP ordered Packer to keep certain diagnostic equipment operational to remain in compliance with state regulations. After conferring with the town, and before this pandemic occurred, Packer contracted with the town to remove the underground storage tanks and install above ground convault tanks, thereby solving the water intrusion issue. This change has come at a cost to Packer of \$200,000.00, which it has contracted with the Town of Edgartown to expend. Should



this “shelter in place” continue Packer will not be able to afford the contracted upgrades to this fuel pier upgrade.

In the instant cases there was considerable testimony at trial regarding both company’s finances, including from an expert called by the government. This witness testified to the ability of Packer and Tisbury Towing to pay the fines sought by the government. The assumption was made that Packer and Tisbury Towing’s income would remain constant and not decline or come to a near stop. This expert could never have taken into account both the federal and state governments’ shutdown of the United States economy due to the COVID 19 pandemic. In September 2019, the pandemic had not been identified nor predicted by anyone and certainly not anyone involved with this trial. The ability of the separate defendants to pay the fines assessed has been severely and negatively changed as a result of the unprecedented actions of the United States and the Massachusetts governments leadership. Packer’s business has been cut by more than 50% and keeping employees employed is becoming harder to accomplish with each week that passes. Tisbury Towing’s business has all but stopped. In applying the above rule 60(b)(6) to this case, the circumstances have drastically changed since trial and not as a result of anything either company has done. In fact, in addressing a dangerous public health threat the political leaders of the United States and Commonwealth of Massachusetts have taken steps which have made it impossible for Packer and Tisbury Towing to comply with the orders made in this case.

Therefore, Packer and Tisbury Towing are in the same position many businesses are in now around the country. They are each trying to keep their companies from financial failure.

Neither company is capable of paying the assessed fines as the financial effect of the government ordered shut-down has crushed their income and depleted reserve funds to nothing.

Therefore. The R. M. Packer Co. Inc. and Tisbury Towing and Transportation Co. Inc. seek relief from these orders by eliminating further monetary fines ordered in this case.

Respectfully submitted  
R. M. Packer Co. Inc. and  
Tisbury Towing and Transportation Co. Inc.  
By their attorney

April 28, 2020

Theodore A. Saulnier  
P.O. Box 1524  
N. Falmouth, MA 02556  
774-563-1298  
BBO# 560643  
tsaulnierjd@yahoo.com

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

United States,  
Plaintiff

v.

C.A. 1:16-CV-10767-DJC

R. M. Packer Co. Inc.,  
Defendant

United States of America

v.

C.A. 1:16-CV-10769-DJC

Tisbury Towing and Transportation Co. Inc.

**DEFENDANTS MOTION  
FOR RELIEF FROM JUDGEMENT PURSUANT TO  
FED. R. CIV. P. RULE 60(B)(6)**

Now comes the Defendants in the above captioned matter and prays that this honorable court relieve the defendants from the monitory fines assessed in these matters. In support of this motion the defendant relies on the accompanying, Defendants Memorandum In Support Of Their Motion For Relief From Judgement Pursuant To Fed. R. Civ. P. Rule 60(B)(6).

Respectfully submitted  
R. M. Packer Co. Inc. and  
Tisbury Towing and Transportation Co. Inc.  
By their attorney

April 28, 2020

Theodore A. Saulnier  
P.O. Box 1524  
N. Falmouth, MA 02556  
774-563-1298  
BBO# 560643  
tsaulnierjd@yahoo.com

**From:** [Barton, Kasey](#)  
**To:** [Jerry Batterson](#); ["Robert Newton"](#)  
**Cc:** [Hensley, Dave](#)  
**Subject:** RE: Troy Elevator Inc. Response  
**Date:** Friday, April 17, 2020 9:59:00 AM  
**Attachments:** [Troy Elevator CAFO.pdf](#)

---

*Contains Settlement Communications*  
*Subject to FRE 408*

Hi Jerry and Rob:

I'm sorry for the delay in getting back to you. We are able to accommodate the payment plan you proposed. Please find attached for your review EPA's draft Consent Agreement and Final Order, which memorializes our settlement of this matter. Please note the payment plan requirements at paragraph 52, along with the electronic service requirements at paragraphs 53 and 65.

If the CAFO is acceptable, please have a responsible official sign page 11 and email a pdf copy of the signed CAFO to me. We would appreciate receiving the signed pdf copy by next Friday, April 24. Please note that the CAFO is subject to final EPA approval.

Please let us know if you have any questions or concerns. We appreciate Troy Elevator's continued cooperation in resolving this matter.

Thanks,  
Kasey

---

**From:** Jerry Batterson <[jbatterson@troyelevatorinc.com](mailto:jbatterson@troyelevatorinc.com)>  
**Sent:** Tuesday, March 24, 2020 1:29 PM  
**To:** Barton, Kasey <[Barton.Kasey@epa.gov](mailto:Barton.Kasey@epa.gov)>  
**Subject:** RE: Troy Elevator Inc. Response

Thank you for the update. Stay safe.

Take Care,  
Jerry Batterson

---

**From:** Barton, Kasey [<mailto:Barton.Kasey@epa.gov>]  
**Sent:** Tuesday, March 24, 2020 1:15 PM  
**To:** Jerry Batterson  
**Cc:** 'Robert Newton'; Hensley, Dave  
**Subject:** RE: Troy Elevator Inc. Response

Hi Jerry:

Thank you for letting us know, we appreciate it. We will check with our management and finance

center about your proposed payment plan and get back to you.

Kasey

---

**From:** Jerry Batterson <[jbatterson@troyelevatorinc.com](mailto:jbatterson@troyelevatorinc.com)>

**Sent:** Monday, March 23, 2020 2:21 PM

**To:** Barton, Kasey <[Barton.Kasey@epa.gov](mailto:Barton.Kasey@epa.gov)>

**Cc:** 'Robert Newton' <[rnewton@troyelevatorinc.com](mailto:rnewton@troyelevatorinc.com)>

**Subject:** FW: Troy Elevator Inc. Response

Kasey, below is an outline of Troy Elevator Inc's response to the conference call that was held on Thursday, March 19, 2020:

Troy Elevator Inc. agrees to pay the EPA a total sum of \$37,063 in fines. We would propose to pay \$10,000 within 30 days of the agreement being reduced to writing and signed by both parties. Troy Elevator Inc. would then pay the remaining \$27,063 in 12 equal monthly payments starting 30 days after the \$10,000 down payment is made. We understand that there will be a reasonable interest amount charged on the \$27,063 balance.

We know, from discussion during the conference call, that you would prefer to have the payments take place within a six month time period, but due to the current condition and uncertainty of our country's economy we would really like to have the payments take place over the proposed 12 month period.

Thank You,  
Jerry Batterson  
Troy Elevator Inc.  
641-208-5097



Virus-free. [www.avg.com](http://www.avg.com)